



Rural Development
Multi-Family Housing Programs
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538 Guarantee Approval & Closing Documents

Section 538 Guaranteed Rural Rental Housing ("538") Loan Program

Attached are copies of all of the forms and certifications that are involved in USDA Rural Development issuing its guarantee. All of these documents are prepared by USDA Rural Development and provided to the lender when appropriate.

1. Form RD 3565-2, "Conditional Commitment" – with sample conditions. This is the form used by USDA Rural Development to approve a 538 guarantee and set forth all approval conditions. This form can be viewed online at: <http://rdinit.usda.gov/regs/forms/3565-02.pdf> Attached as Exhibit A are sample conditions which illustrate typical conditions that would be attached to the Conditional Commitment.
2. Lender certification. Prior to issuance of the 538 guarantee, the lender must certify that certain conditions have been met. The conditions are specified in RD Instruction 4279-B, Section 4279.181. There is no official "form" for making this certification, so California USDA Rural Development has developed a suggested format, which is attached as Exhibit B.
2. Form RD 3565-3, "Lender's Agreement." This form is executed by USDA Rural Development and the lender. It sets forth the rights, responsibilities, and conditions governing all 538 guarantees. The lender need only execute one Lender's Agreement, which then governs all 538 guarantees issued thereafter. This form can be viewed online at: <http://rdinit.usda.gov/regs/forms/3565-03.pdf>
3. Form RD 3565-4, "Loan Note Guarantee." This form is the actual guarantee document. This form can be viewed online at: <http://rdinit.usda.gov/regs/forms/3565-04.pdf>

538 Regulations & Forms

Regulations are available online at: <http://rdinit.usda.gov/regs/hblist.html#hbw6>

Forms are available online at: <http://rdinit.usda.gov/regs/formtoc.html>

More Information

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Exhibit A: SAMPLE CONDITIONS FOR A CONDITIONAL COMMITMENT

Attachment to Form 3565-2, "Conditional Commitment (Multifamily Housing)"

538 Rural Partners, LP 04-000-0000000000 GRRH

Project Name: Pleasant Valley Apartments

\$2,500,000.00 Guaranteed Rural Rental Housing Loan (GRRH)

Approval Date:

1. The purpose of the loan is to provide long-term financing for the development of Pleasant Valley Apartments, a new 80-unit rental housing project at 1234 Community Road in Ruraltown, California.
2. A 90 % guarantee will be issued.
3. The term of the loan is to be 25 years. The interest rate is to be fixed. The interest rate is to be established at loan closing by the formula: $IR = 10\text{-year Treasury Bond Yield} + 1.5$. The loan is to be fully amortized with monthly installments.
4. This loan is to be secured by a first deed of trust (including assignment of rents) on the approximately 4-acre property being financed with this loan. All taxes and assessments are to be current at loan closing. There are to be no construction or mechanics liens against the security after closing.
5. Property, borrower fidelity, mortgagee errors & omissions, and liability insurance naming the lender as beneficiary will be maintained in amounts that meet or exceed the insurance requirements of Fannie Mae or Freddie Mac.
6. Prior to the issuance of the guarantee, the project must attain an occupancy rate of at least 97% of all units.
7. For the full term of this loan as set forth in condition #3 above – regardless of whether the loan is paid in full prior to that time – the housing and related facilities financed with this loan are not to be used for any purpose other than an approved GRRH program purpose, i.e. the project must be maintained as affordable housing for low and moderate income households. A deed restriction to assure this – containing the covenants set forth in 7 CFR Part 3565, §3565.202(a), §3565.203, and §3565.352 – is to be executed at loan closing and recorded in the real estate records of the appropriate jurisdiction.
8. A regulatory agreement between the borrower and the lender governing the management and operation of the project – containing the covenants cited in 7 CFR Part 3565, §3565.351 – is to be executed at loan closing. Note that this includes a requirement for the borrower to provide audited financial statements on the project (in accordance with Generally Accepted Government Auditing Standards) to the lender annually within 90 days of the project's fiscal yearend. NOTE: The "Regulatory Agreement" that was submitted with the GRRH application satisfies this condition.
9. The lender must ensure that the borrower is in compliance with applicable fair housing laws in the development of the property, the selection of applicants for housing, and ongoing management. The lender must ensure that the borrower is in compliance with the approved Affirmative Fair Housing Marketing Plan.

10. Prior to issuance of the guarantee, the lender will provide USDA Rural Development with the following:
 - a. A guarantee fee of \$22,500.00 ($= \$2,500,000 \times 90\% \times 1\%$) payable to USDA Rural Development.
 - b. An executed Form RD 3565-3, "Lender's Agreement", with the annual guarantee fee established as "one-half (1/2 percent)" in ¶ II.E of the Agreement. The guarantee will be governed by this Agreement.
 - c. A copy of the executed loan and security instruments, title insurance, recorded deed restriction (see condition #7 above), regulatory agreement (see condition #8 above), and detailed loan settlement statement.
 - d. A copy of the final, approved plans and specifications for the project.
 - e. A copy of all required building permits with sign-offs, notice of completion, and certificate of occupancy.
 - f. A final cost certification, such as the cost certification prepared for the agency providing tax credits.
 - g. An executed lender certification that the conditions set forth in this Conditional Commitment have been met. (USDA will provide a format that may be used for this purpose.)
 - h. An executed Form RD 1980-19, "Guaranteed Loan Closing Report", with the applicable fields completed. (USDA will provide a partially completed form for this purpose.)
11. Annually, the lender will provide USDA Rural Development with the following:
 - a. *On or before January 1st*, pay to USDA Rural Development an annual servicing fee equal to 50 basis points on the outstanding balance on December 31.
 - b. *Within 120 days of the borrower's fiscal yearend*:
 - i. The borrower's audited financial statement on the project along with the lender's credit analysis.
 - ii. A lender certification that the project has been inspected, that the records of the borrower have been reviewed, and that the project is operating in accordance with the provisions of the GRRH program and the regulatory agreement. If the project is not in compliance, this will be reported with proposed actions to remedy this.

Exhibit B: SAMPLE LENDER'S CERTIFICATION
(Guaranteed Rural Rental Housing Loan – 538)

Borrower Name: _____
Project Name: _____
Lender Name: _____
Amount of Loan: _____
Date of Conditional Commitment: _____

THE LENDER CERTIFIES THAT:

1. There has been no material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the issuance of the Conditional Commitment to issuance of the Guarantee of the loan, regardless of the cause or causes in the change and whether the change or cause of the change were within the lender's or borrower's control, except those approved in the interim in writing by USDA Rural Development.. (For the purposes of this paragraph, the term "borrower" includes additionally any parent, affiliate, or subsidiary of the borrower and any guarantors.)
2. The Borrower has attained the minimum tenant occupancy requirement at the project as set forth in the Conditional Commitment.
3. If tax credits are being used in conjunction with the guaranteed loan, the Lender certifies that the Borrower is in compliance with the tax credit agreement.
4. The Borrower is in compliance with the Regulatory Agreement and GRRH program requirements with respect to all aspects of project management.
5. The Lender has approved the Borrower's management plan and assures that the Borrower is in compliance with USDA Rural Development standards regarding property management, including the requirements contained in 7 CFR Part 3565, Subparts E & F.
6. No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, except those approved in the interim in writing by USDA Rural Development.
7. All planned property acquisition and development has been or will be completed, and all development has been or will be substantially completed in accordance with plans and specifications and conforms with applicable Federal, State, and local codes. Costs have not exceeded the amounts approved by the lender and USDA Rural Development.
8. Required property hazard, flood (if required), borrower fidelity, mortgagee errors & omissions, liability, and worker compensation insurance is in effect.
9. The loan has been properly closed, and the required security instruments have been obtained, or will be obtained on any acquired property that cannot be covered initially under State law.
10. The borrower has marketable title to the collateral for the loan, subject to the instrument securing the loan to be guaranteed and subject to any other exceptions approved in writing by USDA Rural Development.

11. Lien priorities are consistent with the Conditional Commitment's requirements. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been or will be filed against the collateral and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.
12. The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and Form RD 3565-1. A copy of a detailed loan settlement statement is attached or has been provided to USDA Rural Development.
13. None of the lender's officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stockshare requirements for participation) has a substantial financial interest in the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Farm Credit System (FCS) institution that is the lender, the lender certifies that an FCS institution on the next highest level has independently processed the loan request and will act as the lender's agent in servicing the account.
14. The Loan Agreement includes all measures identified in USDA Rural Development's environmental impact analysis and set forth in the Conditional Commitment for this project (measures with which the borrower must comply) for the purpose of avoiding or reducing adverse environmental impacts of the project's construction or operation.
15. All other requirements of the Conditional Commitment have been met.

The above requirements have been met on the guaranteed loan.

(Signature of Lender)

By: _____

Date: _____ Title: _____